



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/796,082

03/10/2004

Mireille Maubru

05725.1274-00

2687

22852

7590

09/22/2008

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP

901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

09/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

In view of common ownership statements over commonly owned U.S. Patent No. 7,258,852 (the '852 patent) or U.S. Patent Application Publication Nos. 2003/0108503 (the '503 publication) or 2003/0103927 (the '927 publication) or 2004/0001796 (the '796 publication) or 2003/0103929 (the '929 publication) , the rejection of 1, 2, 4-5, 7-9, 27, 36, 51, 53, 55, 57, 60-62, 64, 66, and 73 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 7,258,852 (the '852 patent) or U.S. Patent Application Publication Nos. 2003/0108503 (the '503 publication) or 2003/0103927 (the '927 publication) or 2004/0001796 (the '796 publication) or 2003/0103929 (the '929 publication) taken individually or in combination with U.S. Patent Application Publication Nos. 2004/0197356 (the '356 publication) or 2004/0197355 (the '355 publication) is hereby withdrawn.

The following rejection is maintained.

Claims 1, 2, 4-5, 7-9, 27, 36, 51, 53, 55, 57, 60-62, 64, 66, and 73 are rejected under 35 U.S.C. 103(a) as being obvious over the combination of U. S. Patents 6,635,702 ('702) and 5,580,494 ('494) and WO documents WO /2002/096,385 ('385) and WO /2002/096,377 ('377)

WO /2002/096,377 ('377) corresponds to **US 2004/0197355('355)** and WO /2002/096,385 ('385) corresponds to **US 2004/0197356('356)**. **Examiner is relying on the PG PUB documents for teaching of particles claimed.**

The instant application is claiming a cosmetic composition comprising:

1. At least one cross-linked copolymer comprising at least one methacrylic acid unit and at least one C1-C4 alkyl acrylate unit,

2. Polyethyleneimine, and

Art Unit: 1615

3. Particles comprising at least 10% by weight of calcium carbonate

4. Silicone (claims 57, 60 and 62)

5. One agent beneficial to keratin material (claims 61 and 64)

6. Surfactant (claim 66)

Patent '702 teaches aqueous surfactant compositions using the ingredients 1, and 4-6. Patent '702 teaches ingredient 1 as a rheology modifier. See the abstract for ingredient 1 and silicone. See col.3, lines 20 *et seq* and see col.4, clo.5, lines 1-40 for the cross-linked polymer which is formed from the two monomers and the cross linking agent. Patent '702 also teaches surfactants at col.5, line 41 to col.6, line 60 and teaches silicones at col.7, ll 25-68. Patent at paragraph bridging col.s 8-9 suggests adding insoluble compounds and this includes claimed calcium carbonate at col.8, line 60. See col.11, ll 50-53 for the additives and these belong to agent beneficial to keratin material like waxes. Patent at col.11, line 41 suggests adding cationic conditioning polymers. This is same as claimed cationic polymer. Patent also teaches the use of these compounds in the compositions in the form of shampoos at col.11, last paragraph. See all the examples. Patent '702 teaches under examples shampoos. Shampoos are for treating keratin material. The difference between the patent and the instant application is the patent does not teach claimed cationic polymer polyethyleneimine or at least 10 % by weight of calcium carbonate. Patent '494 teaches shampoo compositions using the claimed cationic polymer (polyethyleneimine) along with surfactant. See the abstract, see col.2, ll 20-60 for the cationic polymer and see ll 61-62 for polyethyleneimine and see silicones at col.5, ll 5-45. Patent at col.6, ll 51-62 suggests adding thickeners also known as rheology modifiers to the compositions. See examples. WO documents teach using 10 % of calcium carbonate in cosmetic compositions and

Art Unit: 1615

using these compositions for hair. WO /2002/096,377 ('377) corresponds to US

2004/0197355('355). PGPUB ('355) also teaches cosmetic compositions comprising ingredient 3 and 5-6. See the title, see the abstract, see paragraphs 22-31 for ingredient 3, see paragraphs 44-70 for ingredient 4, see paragraphs 61-80 for the cationic polymer, see paragraphs 35-60 for ingredient 6 and see paragraph 88, 90 for ingredient 5 and see paragraphs 93-94 for application of the compositions to keratin material. WO /2002/096,385 ('385) corresponds to US

2004/0197356('356). PGPUB ('356) teaches cosmetic compositions comprising ingredient 3-6. See the title, see the abstract, see paragraphs 21-30 for ingredient 3, see paragraphs 44-70 for ingredient 4, see paragraphs 71-91 for the cationic polymer, see paragraphs 35-43 for ingredient 6 and see paragraph 99 for ingredient 5 and see paragraphs 104-105 for application of the compositions to keratin material.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare compositions of patent '702 and add calcium carbonate and polyethyleneimine (cationic polymer) expecting beneficial effect to the hair. One of ordinary skill in the art would be motivated to add the cationic polymer and panthenol into the compositions of '702 expecting that the compositions which has the acrylic acid/alkylacrylate polymer provides acceptable rheology without significant increased or decrease in viscosity or pH, with no separation settling with extended periods of time and adding the polyethyleneimine into the compositions provide the a conditioning effects which is excellent for the keratin and adding calcium carbonate particles would provide the additional benefit of better hair style hold and increased sensation of thickness to the hair. This is prima facie case of obviousness.

Art Unit: 1615

Response to Arguments

Applicant's arguments filed 8/28/08 have been fully considered but they are not persuasive.

Applicant's argue:

“Applicants note that the '702 patent does not teach or suggest that calcium carbonate can "provide stability," as alleged by the Examiner as the sole basis for utilizing calcium carbonate in the composition. Rather, the '702 patent states, under the heading of "Insoluble Materials or Compounds" which the Examiner cites in the Office Action at page 11, that "[t]he materials or compounds which require stabilization can be soluble or insoluble in water." The '702 patent, col. 7, lines 14-16 (emphasis added). The '702 patent goes on to explain that calcium carbonate is an example of "insoluble compounds which require stabilization " Id., col. 8, lines 55-60 (emphasis added). Accordingly, calcium carbonate actually needs to be stabilized, rather than providing stability, as alleged by the Examiner".

Examiner did not state that calcium carbonate provides stability. It is the position of the examiner that patent '702 suggests adding calcium carbonate and teaches that the insoluble compounds can be anywhere from 0.1-50 % and PGPUB documents teach claimed at least 10 % by weight of calcium carbonate. PGPUB '355 and '356 under paragraph [0008] teaches that the particles are used in rinse-out compositions to improve the feel and appearance of the hair. PGPUB '355 and '356 also teach under paragraph [0011] that by selecting the conditioner and

Art Unit: 1615

calcium carbonate particles it is possible to improve the results of cosmetic products, especially rinse-out products, in terms of cosmetic properties and shaping properties. Hair is given increases sensation of thickness (voluminizing) and better hairstyle hold. Both the properties are advantageous to the consumer.

Therefore one of ordinary skill in the art would be motivated to add the cationic polymer and into the compositions of 702 expecting that the compositions which has the acrylic acid/alkylacrylate polymer provides acceptable rheology without significant increased or decrease in viscosity or pH, with no separation settling with extended periods of time and adding the polyethyleneimine (cationic conditioning polymer) into the compositions provide conditioning effects which is excellent for the keratin and adding calcium carbonate particles would provide the additional benefit of better hair style hold and increased sensation of thickness to the hair.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1615